Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of		
ROY M. SPEER (Transferor)		
and		
SILVER MANAGEMENT COMPANY (Transferee)		
For Transfer of Control of		
SKIL Broadcasting Partnership, Licensee of WEHS-TV, Aurora, IL	File Nos.	BTCCT-950913KG
SKDA Broadcasting Partnership, Licensee of KHSX-TV, Irving, TX		BTCCT-950913KE
SKHO Broadcasting Partnership, Licensee of KHSH-TV, Alvin, TX		BTCCT-950913KF
SKMD Broadcasting Partnership, Licensee of WHSW-TV, Baltimore, MD		BTCCT-950913KH
SKNJ Broadcasting Partnership, Licensee of WHSE-TV, Newark, NJ, WHSI-TV, Smithtown, NY, and W60AI, New York, NY		BTCCT-950913KJ BTCCT-950913KK BTCTTL-950913KQ
SKOH Broadcasting Partnership, Licensee of WQHS-TV, Cleveland, OH		BTCCT-950913KL
SKLA Broadcasting Partnership, Licensee of KHSC-TV, Ontario, CA		BTCCT-950913KM
SKVI Broadcasting Partnership, Licensee of WHSP-TV, Vineland, NJ		BTCCT-950913KN
SKFL Broadcasting Partnership, Licensee of WYHS-TV, Hollywood, FL		BTCCT-950913KO

SKTA Broadcsting Partnership,	
Licensee of WBHS-TV, Tampa, FL	BTCCT-950913KP
North Central LPTV, Inc.,	
Licensee of W13BN, Columbus, OH,	BTCTTL-950913KR
K21OD, St. Louis, MO	BTCTTL-950913KS
K26CR, Kansas City, MO	BTCTTL-950913KT
W33AY, Springfield, IL	BTCTTL-950913KU
W39BH, Champaign, IL	BTCTTL-950913KV
W64BM, Toledo, OH	BTCTTL-950913KW
K35CY, Minneapolis, MN	BTCTTL-950913KX
K41DD, Des Moines, IA	BTCTTL-950913KY
South Central LPTV, Inc.,	
Licensee of K15DD, Witchita, KS	BTCTTL-950913KZ
K14IE, New Orleans, LA	BTCTTL-950913LA
K67FD, Shreveport, LA	BTCTTL-950913LB
K39CW, Tulsa, OK	BTCTTL-950913LC
Southeast LPTV, Inc.,	
Licensee of W24BF, St. Petersburg, FL	BTCTTL-950913LD
W24AL, Atlanta, GA	BTCTTL-950913LE
W56CM, Knoxville, TN	BTCTTL-950913LF
W36AJ, Jacksonville, FL	BTCTTL-950913LG
W58CD, Raleigh, NC	BTCTTL-950913LH
W52BF, Mobile, AL	BTCTTL-950913LI
W34BI, Birmingham, AL	BTCTTL-950913LJ
W31BB, Pensacola, FL	BTCTTL-950913LK
Northeast LPTV, Inc.,	
Licensee of W17BH, Huntington, WV	BTCTTL-950913LL
W56CP, Roanoke, VA	BTCTTL-950913LM
W56CS, Portsmouth, VA	BTCTTL-950913LN
West LPTV, Inc.,	
Licensee of K21CX, Tucson, AZ	BTCTTL-950913LO
K14IF, Spokane, WA	BTCTTL-950913LP

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 1996 **Released:** March 11, 1996

By the Commission: Commissioners Barrett and Ness issuing separate statements.

1. The Commission has before it for consideration the above-captioned applications seeking consent to the transfer of control of Silver King Communications, Inc. (Silver King), which indirectly controls the above-captioned licensees, from Roy M. Speer to Silver Management Company (Silver Management). Silver King, the ultimate licensee of the twelve television stations and 25 low power television stations cited in the caption above,[1] is a publicly traded company whose primary business is the ownership and operation of television stations. Jovon Broadcasting Corporation (Jovon), the licensee of WJYS(TV), Hammond, Indiana, timely filed a petition to deny the applications, later requested withdrawal of the petition, and filed a petition for declaratory ruling on the allegations contained in its petition.

2. The proposed controlling entity of Silver King is Silver Management, a newly formed, privately held company, whose sole stockholders are Arrow Holdings L.L.C., ultimately owned by Barry Diller,[2] and Liberty Media Corporation (Liberty), a wholly owned subsidiary of Tele-Communications, Inc. (TCI). According to documents furnished by Silver King, Diller will own all of the voting stock of Silver Management and TCI will own almost all of the equity but no voting stock in the controlling company. Silver Management requests that we find that the nonvoting nature of TCI's stock renders its interest in Silver Management non-attributable and its level of indirect equity interest in Silver King, approximately 21.37 percent, in conformance with the Commission's cross-interest policy.

3. Additionally, Silver King has operated two of the twelve television stations, WHSE-TV, Newark, New Jersey, and WHSP-TV, Vineland, New Jersey, under a permanent waiver of the Commission's duopoly rule, Section 73.3555(b), which generally proscribes common ownership of television stations whose Grade B contours overlap. Silver King also has operated another television station, WHSI-TV, Smithtown, New York, whose Grade B contour also overlaps with that of WHSE-TV, Newark, as a satellite station pursuant to the satellite television exemption of Note 5 to Section 73.3555. Accordingly, Silver Management requests a renewed permanent waiver of the duopoly rule for WHSE-TV and WHSP-TV and continued satellite exemption for WHSI-TV.

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[1] Silver King is the sole stockholder of SKTV, Inc., which, in turn, is the sole stockholder of UHF Investments, Inc., the one-percent managing general partner of the television licensees. The other 99-percent general partner of each licensee is a wholly-owned subsidiary of SKTV, Inc. The licensees of the low power television stations are wholly owned by Silver King Broadcasting - LPTV, Inc., which, in turn, is wholly owned by Silver King Broadcasting of Illinois, Inc., a wholly owned subsidiary of SKTV, Inc.

[2] For ease of reference and because Arrow Holdings is wholly owned by Diller, we shall refer to Arrow Holdings as "Diller."

4. As more fully discussed below, we shall grant Jovon's request to withdraw its petition and we shall defer consideration of the merits of its petition for declaratory ruling to a separate proceeding. Action on the Silver King applications is conditioned upon a maintenance of the status quo between Jovon and Silver King and resolution of that proceeding. Further, for reasons that follow, we (1) find that TCI's interest in Silver Management is not attributable and that the Commission's cross-interest policy is not violated by TCI's financial interest in Silver Management, (2) grant Silver Management permanent waiver of the duopoly rule for WHSE-TV and WHSP-TV, and (3) grant Silver Management continued satellite exemption for WHSI-TV.

Jovon Petition to Deny

5. Jovon is the licensee of television station WJYS(TV), Channel 62, Hammond, Indiana, which is located in the Chicago designated market area (DMA), the same market in which Silver King's WEHS-TV, Channel 60, Aurora, Illinois, is located. In its petition to deny, Jovon requested that the Commission make a finding on two issues relating to an option agreement Jovon entered into with Silver King's predecessors in 1990. First, Jovon alleges that, if successful, Silver King's recent attempts pursuant to one of those agreements to exercise the option to acquire a 45 percent equity interest in Jovon, would implicate the Commission's cross-interest policy. That policy generally prohibits a party from holding an attributable interest in one media outlet in a market and a "meaningful" interest by the same party in another media outlet in the same market. See Notice of Inquiry in MM Docket No. 87-154, 2 FCC Rcd 3699, 3699 (1987). Second, Jovon contends that Silver King's attempted exercise of the option, along with the potential rights and powers obtained through other option-related agreements, loan documents, and a programming affiliation agreement also entered into with Silver King, collectively constitute an "effort" to wield de facto control over Jovon and WJYS(TV) in violation of the television duopoly rule. That rule, Section 73.3555 of the Commission's Rules, generally prohibits the common ownership or control of television stations whose Grade B contours overlap. Silver King, in its opposition, refuted Jovon's allegations, arguing that the various Jovon-Silver King agreements are consistent with Commission case law and circumscribe no Commission policy or rule.

6. Subsequent to the filing of the Silver King opposition, on November 7, 1995, Jovon requested dismissal of its petition. Concurrently, Jovon filed a request for declaratory ruling, containing the same allegations raised in the petition. The affidavits attesting to the absence of consideration paid or received in exchange for withdrawal of the petition, as required under Section 73.3588 of the Commission's Rules, have been filed by both Jovon and Barry Diller, who will own all of the voting stock of Silver Management, the proposed controlling entity of Silver King. Accordingly, we shall dismiss Jovon's petition.

7. Ordinarily, before acting upon applications that are the subject of a withdrawn petition, we consider the merits of the allegations to insure that the public interest will be served by grant of those applications. See, e.g., Quincy D. Jones, FCC 95-497 at ¶17 (released

December 12, 1995), Stockholders of CBS Inc., FCC 95-469 at ¶14 (released November 22, 1995), BBC License Subsidiary L.P. (WLUK-TV), 10 FCC Rcd 7926, 7926 (1995)(all citing Booth American Company, 58 FCC 2d 553, 554 (1976)). Here, unlike past cases, however, Jovon has substituted its withdrawn petition with a petition for declaratory ruling, which could serve as an alternative vehicle for our evaluation of the same allegations in a later separate proceeding. Indeed, such a procedural path, with appropriate conditions as discussed below, would facilitate transfer of the twelve television stations to Silver Management and implementation of the attendant public interest benefits discussed in the context of the duopoly waiver request, below, without raising questions under the Commission's Jefferson Radio policy.

8. Under the Jefferson Radio policy, the Commission withholds action on assignment and transfer applications where the seller's qualifications to continue holding the license are in issue. See Jefferson Radio Co. v. FCC, 340 F.2d 781 (D.C. Cir. 1984). Inherent in this policy is the judgment that licensees should "be held accountable for their stewardship and will not be allowed to evade the consequences of their misconduct or abuse of a license by selling the station at the end of the license period." 1400 Corp., 4 FCC 2d 715, 716 (1966), modified, 7 FCC 2d 517 (1967). In the case before us, however, no misconduct on the part of Silver King is alleged to have occurred. Rather, Jovon's allegations of infringement of the Commission's cross-interest policy and violation of the Commission's multiple ownership rules turn on Silver King's acquisition of a 45-percent equity interest in Jovon, a transaction, the record indicates, that has not yet been consummated. We note that correspondence contained in the record indicates that since October 21, 1994, Silver King has made repeated attempts to exercise the option, but has been rebuffed by Jovon. Because the act underlying the alleged misconduct has not transpired, we find that Silver King has engaged in no behavior which calls into doubt its qualifications as a licensee or its ability to transfer the numerous broadcast stations. Were Silver King to actually acquire the 45-percent interest through exercise of the option, cross-interest policy and attribution concerns might be raised. Our finding, therefore, assumes that exercise of the option has not and will not be consummated until resolution of Jovon's petition for declaratory ruling. Action on the transfer applications here, therefore, will be subject to the outcome of the proceeding involving the petition for declaratory ruling, as well as maintenance of the status quo of contractual relations between Jovon and Silver King, either as currently controlled by Speer or proposed to be controlled by Diller through Silver Management. That means not only that Silver King must refrain from exercising the option, but it may not pursue any of its remedies in law or equity under the loan documents and option-related agreements until we have addressed the Jovon allegations. Short of pursuing such remedies, Silver King can act to preserve its rights under those agreements. So as not to unduly interfere with the contractual relations of the parties, we shall endeavor to act promptly on Jovon's petition.

TCI's attributable status/cross-interest in Silver King

9. Silver Management, the proposed controlling company of Silver King, asserts that its sole voting stockholder, Barry Diller, will wield de jure and de facto control of Silver

Management while TCI will have no voting rights or rights to representation on the board of directors. Citing Section 73.3555 of the Commission's Rules and the order implementing that rule, Ownership Attribution, 97 FCC 2d 997 (1984), Silver Management contends that TCI's nonvoting interest in Silver Management is not attributable. If deemed attributable, TCI's interest in Silver King would render it in violation of the television-cable cross-ownership rule, Section 76.501 of the Commission's Rules. That rule generally prohibits ownership and/or control of a television station whose Grade B contour overlaps the service area of a cable television system.[3] Silver Management also maintains that TCI's indirect approximately 21.37 percent equity interest in Silver King, through its nonvoting stock in Silver Management, does not violate the Commission's cross-interest policy. That policy generally prohibits parties from owning and controlling a media outlet while also holding a "meaningful" interest in another media outlet in "substantially the same area." See Notice of Inquiry in MM Docket No. 87-154, 2 FCC Rcd 3699, 3699, 3700 (1987), Further Notice of Inquiry/Notice of Proposed Rule Making, 4 FCC Rcd 2035 (1989), Policy Statement, 4 FCC Rcd 2209 (1989), Further Notice of Proposed Rule Making, 10 FCC Rcd 3606 (1995). In this case, TCI owns and operates cable television systems in each of the eleven DMAs in which are located Silver King's twelve television stations.

10. Silver Management, pointing to the Commission's approval, in Cleveland Television Corp., 91 FCC 2d at 1133, of a one-third non-voting equity position, argues that TCI's level of equity is not "meaningful" within the cross-interest policy. Nor do the TCI-owned and -operated cable systems serve "substantially the same area," according to Silver Management, which states that the cable systems provide service to subscriber homes representing less than fifteen percent of total TV households in nine of the eleven Silver King television markets and less than 22 percent in the remaining two markets. Specifically, Silver Management reports that TCI cable subscriber households represent the following percentages of the total television households in these eleven DMAs: Chicago, the DMA for WEHS-TV, Aurora, Illinois -- 14.79%; Dallas-Ft. Worth, the DMA for KHSX-TV, Irving, Texas -- 19.89%; Houston, the DMA for KHSH-TV, Alvin, Texas -- 12.63%; Baltimore, the DMA for WHSW-TV, Baltimore -- 13.82%; Boston, the DMA for WHSH-TV, Marlborough, Massachusetts -- 2.86%; New York City, the DMA for WHSE-TV, Newark, New Jersey, and for WHSI-TV, Smithtown, New York -- 6.96%; Cleveland, the DMA for WQHS-TV, Cleveland -- 7.31%; Los Angeles, the DMA for KHSC-TV, Ontario, California -- 5.01%; Philadelphia, the DMA for WHSP-TV, Vineland, New Jersey -- 5.25%; Miami, the DMA for WYHS-TV, Hollywood, Florida -- 21.26%; and Tampa, the DMA for WBHS-TV, Tampa -- 6.13%.

11. Further, Silver Management represents that the Silver King stations and the cable systems attributable to TCI will be "operated independently in all respects following

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[3] Section 202(i) of the recently enacted Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, approved February 8, 1996, repeals the statutory prohibition on broadcast-cable cross-ownership, 47 U.S.C. §613(a), but leaves intact the similar Commission rule.

consummation of the proposed transaction." Additionally, each of the eleven affected markets, according to Silver Management, "is highly competitive," served by at least eight and as many as 24 commercial and non-commercial broadcast television stations, numerous radio stations, cable television systems, print and other media. Under these circumstances, Silver Management concludes, neither TCI on the one hand, nor Silver Management and Diller on the other, would have the ability to direct or influence the operations or activities of the other in a manner that would reduce competition in any of the Silver King markets.

12. It is true, as Silver Management contends, that our attribution rules classify nonvoting stock in a licensee or its parent as noncognizable for purposes of the multiple ownership rules. But we cannot ignore other relationships that may exist between a nonvoting stockholder and the licensee. Indeed, as we recently reiterated in BBC License Subsidiary L.P. (WLUK), "we must assess the cumulative effect of all relevant factors to determine whether the goals of our multiple ownership rules will be 'served or hindered by the structure and relationships presented to us.'" 10 FCC Rcd at 7933 (quoting KKR Associates, 2 FCC Rcd 7104, 7107 (1987)). Similarly, a cross-interest analysis also requires consideration of those same relationships which, even when viewed collectively, do not constitute cognizable status but nevertheless trigger Commission concerns relating to diversity of viewpoint and economic competition. See Quincy D. Jones, FCC 95-497 at ¶33 (citing Minnesota Broadcasting Corp., 13 FCC 672 (1949); United Community Enterprises, Inc., 37 FCC 2d 953 (Rev. Bd 1972)). Accordingly, we are obligated here to evaluate the extent of TCI's interests in and relationships to Silver Management and Silver King and the structure and governance of those entities.

Capitalization and governance of Silver Management

13. Silver King stock is composed of two classes: common, with one vote per share; and Class B common, with ten votes per share. Roy Speer, directly and through RMS Limited Partnership (RMS), which he controls,[4] currently holds approximately seven percent of the issued and outstanding Silver King common stock and 100 percent of the issued and outstanding Class B stock. In total, therefore, Speer directly or indirectly holds stock representing approximately 78 percent of the voting power of Silver King.

14. In February 1993, Speer granted to then-independent Liberty a transferable option to purchase 2,000,000 of his 2,415,945 shares of Silver King Class B stock. Liberty is now a wholly owned subsidiary of TCI,[5] which separately owns 61,630 shares of Silver King

[4] Speer is the sole stockholder of Crystal Diamond, Inc., the managing general partner of RMS, and is the non-managing general partner of RMS. For ease of reference, we shall refer to RMS as "Speer."

[5] For ease of reference and because Liberty is wholly owned by TCI, we shall refer to Liberty as "TCI."

common stock, or 0.2 percent of that company's voting stock. No cash consideration was paid for the Class B option, which, according to Silver King, was granted in connection with the acquisition by Liberty of a controlling interest in Home Shopping Network, Inc. (HSN) and the spin-off of Silver King to the shareholders of HSN. The exercise price of the Class B option is $1.50 per share until February 12, 1996, at which time the exercise price will increase to $1.75 per share.

15. According to the Schedule 13D filed with the Securities and Exchange Commission by TCI and Diller on August 28, 1995, because the Communications Act and the Commission's rules prohibit common ownership of television stations and cable television systems which operate within the Grade B contour of those stations, TCI's ownership "of substantial cable television system assets" made it "unlikely" that TCI would be able to obtain the necessary consents or waivers under Commission Rules in order to exercise the Class B option. As discussed more fully above, several TCI-owned cable systems operate within the Grade B contour of each of the twelve Silver King television stations. "Thus," the Schedule 13D states, "as previously disclosed, Liberty and TCI have, from time to time, considered assigning the Class B option to a third party who would be qualified to assume voting control of [Silver King]."

16. In August 1995, states the TCI-Diller Schedule 13D, TCI began informal discussions with Diller regarding the possibility of entering into a joint venture to be controlled by Diller so as to permit the exercise of the Class B option and the assumption by Diller of voting control of Silver King. Those discussions resulted in two August 24, 1995 letter agreements and accompanying term sheets: one between Diller and Silver King and one between Diller and TCI.[6] The Diller-Silver King agreement, referred to as the "Equity Compensation Agreement" in the Schedule 13D, requires that Diller separately purchase 220,994 shares of Silver King common stock for approximately five million dollars in cash, that he separately purchase an additional 220,994 shares of common stock in exchange for a five-million-dollar note payable to Silver King, and that Silver King grant Diller options to purchase another 1.9 million shares of common stock which will vest in annual installments over the next four years and will be generally exercisable, at a price of $22.63 per share, over the next ten years. Excluding the shares to be acquired through exercise of his options,[7] Diller is to hold

[6] Executed as letter agreements and based upon term sheets, both agreements expressly contemplate that they will be superseded by definitive agreements "which will contain provisions incorporating and expanding upon the agreements set forth therein. . . ." However, the agreements also expressly provide that the letter agreements are binding and until such definitive areements are executed and delivered, if at all, then the letter agreements and attached term sheets constitute such definitive agreements. As of the date of adoption of this order, no definitive agreements have been submitted to the Commission.

[7] The common shares acquired by Diller through full exercise of his options, when added to his current 441,988 shares, will constitute 20.8 percent of the equity and approximately

common stock representing 4.7 percent of the equity and 1.42 percent of the voting power of Silver King. Following these purchases and the grant of the options, the Diller-Silver King agreement calls for Diller initially to assume the positions of Silver King chairman of the board and chief executive officer. Later, if Diller so requests, under the terms of the Diller-Silver King compensation agreement, the Silver King board shall appoint him as chairman and/or CEO and/or president.

17. The Diller-TCI agreement provides that the parties will promptly form a new entity, Silver Management, whose two sole shareholders will be Diller's investment company, Arrow Holdings, LLC, and TCI's Liberty. Diller will be the ultimate holder of all of the voting stock of Silver Management in exchange for a contribution of one hundred dollars in cash. TCI will be the ultimate holder of convertible nonvoting preferred stock in exchange for its contribution of the Class B option and the amount in cash equal to the exercise price of the option, or approximately $3 million to $3.5 million, depending upon the price per share. No transfers or other dispositions of these stock interests in Silver Management is permitted without the consent of each stockholder, that is, Diller and TCI. When Diller ceases to serve as chairman and/or CEO and/or president of Silver King or when he ceases to own 1.1 million shares of Silver King stock, including that obtainable through his options, Diller must sell his interest and corresponding control rights in Silver Management to TCI for one hundred dollars plus interest.

18. The business and affairs of the newly formed Silver Management, under the Diller-Liberty agreement, will be managed by a board of directors elected by Diller, as the ultimate holder of at least a majority of the voting equity interests in the company. However, the unanimous approval of both Diller and TCI, the nonvoting stockholder, is required on any "Fundamental Matter," defined in the Diller-TCI agreement to include the following actions: (1) any transaction not in the ordinary course of business, launching new or additional channels or engaging in any new field of business which will require TCI's divestiture of its interests in Silver Management; (2) the acquisition or disposition "of any assets" or business with a value of 10 percent or more of the market value of Silver Management's outstanding equity securities at the time of such transaction; (3) the incurrence of any indebtedness, which in a single transaction or in the aggregate has a value of ten percent or more of the market value of Silver Management's outstanding equity securities at the time of such transaction; (4) any material amendments to the certificate of incorporation or bylaws of Silver Management; (5) engaging in any line of business other than media, communications

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seven to eight percent of the voting power in Silver King. Under the terms of the stockholders agreement, Diller is permitted to exchange his common stock for supervoting Class B stock on a share-for-share basis. However, we observe that this exchange right will not allow Diller in his own capacity, that is, outside of his venture with TCI, to acquire positive control of Silver King, because the stockholders agreement allows Diller to exchange his stock only so long as TCI owns stock, which if converted, would represent no less than 50% of the total voting power of Silver King.

and entertainment products, services and programming; (6) the settlement of any litigation, arbitration or other proceeding which is other than in the ordinary course of business and which involves any material restriction on the conduct of business by Silver Management or TCI or the continued ownership of its assets by Silver Management or TCI; and (7) any transaction between Silver Management and Diller, subject to exceptions relating to the size of the proposed transaction and those transactions which are otherwise on an arm's length basis.

19. Beyond the ownership and structure of Silver Management, the Diller-TCI agreement expressly provides for the management of Silver King and for the voting, maintenance and disposition of Silver King securities held separately by Diller and for that held via Silver Management and directly in Silver King by TCI. These matters will be governed by a stockholders agreement to be entered into by both Diller and TCI. Under the terms of that agreement, Diller is entitled to exercise voting authority, pursuant to a "conditional" proxy, valid and irrevocable for the full term of the Diller-TCI agreement or the definitive stockholders agreement which may replace that letter agreement, over the 61,630 shares of Silver King common stock held by TCI.

20. Until a "change in law," defined by the term sheet as such time as TCI can exercise full ownership and control over the Silver Management stock without violating the Communications Act or Commission rules, Diller, through his control of Silver Management, will control Silver King. TCI will have no voting rights with respect to Silver King, except for approval rights over the same "Fundamental Matters" enumerated in paragraph 18, above. Additionally, the transferability of all Diller- and TCI-held shares of Silver King securities, including those indirectly held by TCI through its investment in Silver Management, will be restricted. Generally, neither Diller nor TCI can transfer or dispose of its Silver King stock to an unaffiliated third party until the fifth anniversary of the stockholders agreement, in August 2000, or until Diller is no longer chairman and/or CEO and/or president of Silver King. Under both scenarios, either stockholder may sell all, but not less than all, of its Silver King stock, subject to a right of first refusal by the non-transferring stockholder. Portions of the Silver King securities held by each stockholder may be transferred to a third party, also subject to a right of first refusal, so long as the transferring stockholder retains a specified minimum amount of shares, defined to be 1.1 million shares for Diller (including that to be acquired through his options) and one million shares for TCI (including those shares represented by its equity interest in Silver Management). Following a transfer of a portion of TCI-held shares, the outstanding shares retained by both Diller and TCI must collectively represent at least 50.1 percent of the voting power of Silver King on a fully diluted basis.

21. Following a "change in law," TCI's equity interest in Silver Management will convert into voting common stock and TCI will purchase Diller's equity interest in and corresponding control stock in Silver Management for one hundred dollars plus interest. At such time, however, pursuant to the irrevocable proxy, Diller would continue to vote all of the Silver Management and Silver King stock held by TCI, while TCI would enjoy continued approval

rights over fundamental matters and would be entitled for the first time to vote for the election of a slate of Silver King directors, two of whom would be designated by TCI. The remainder of the directors, constituting a majority, would be designated by Diller.

22. The contractual arrangement between Diller and TCI terminates when Diller no longer owns 1.1 million shares of Silver King stock, when TCI no longer owns one million shares, or when Diller is no longer chairman and/or CEO and/or president of Silver King. Upon termination, therefore, Diller's rights to control of Silver Management and Silver King, either through the voting stock or proxy, will cease.[8]

23. The various elements of the Diller-Silver King agreement have been implemented and Diller currently owns 441,988 shares of Silver King common, has been granted the options, and serves as chairman and CEO. By the applications now before us, Silver King seeks Commission consent to the exercise of the TCI-held Class B option by Silver Mangement. Upon exercise of the option, Silver Management would control Silver King through the two million shares of Class B stock contributed by TCI, which will constitute 21.37 percent of the equity and at least 64 percent of the vote, but as much as 73 percent of the vote if Silver Managment elects under the option to require Speer to convert his then-remaining supervoting Class B shares to common shares. Speer, at such time, would own shares representing 9.3 percent of the equity and as little as 3.2 percent and as much as 14.8 percent of the vote of Silver King, depending upon whether the Speer-held Class B stock is converted. And after exercise of the Class B option, Diller would separately continue to own, excluding shares to be acquired through his own options, 4.7 percent of the equity and 1.42 percent of the vote in Silver King. If Speer is required to convert the Class B stock to common, Diller's separate voting power in Silver King would increase to 1.6 percent. He would also vote under the proxy TCI's 0.2 percent voting stock. The remaining 64 percent of the equity of Silver King, representing 19.4 or 22 percent of the vote of that company, depending upon the conversion of Speer's Class B stock, would be held by the public.

Discussion

24. Addressing first the question of attribution, we are guided by the purpose underlying the attribution rules, that is, to identify those interests in or relationships to an applicant which "confer on its holders a degree of 'influence' such that the holders have a 'realistic potential to affect the programming decisions of licensees.'" BBC Licensee Subsidiary L.P. (WLUK-TV), 10 FCC Rcd at 7932 (quoting Attribution of Ownership Interests, 97 FCC 2d 997, 999, 1005 (1984), recon. granted in part, 58 RR 2d 604 (1985), further recon. granted

[8] It is represented by Silver King that in the event of termination, Diller or, in the event of his death, his estate or personal representative (following approval of a short-form transfer of control), would continue to vote his shares until such time as the Commission had approved a transfer of control to TCI or its designee and the approved transfer had been consummated.

in part, 1 FCC Rcd 802 (1986)). In identifying such interests, the Commission is cognizant of the potential influence, as well as control, that a sizable financial contribution can convey to the investor in an applicant. E.g., WLOX Broadcasting Company v. FCC, 260 F.2d 712 (D.C. Cir. 1958). Weighed against that consideration, however, is the tenet that financial investment "is not necessarily the sine qua non of an ownership interest. . . ." KIST Corp., 102 FCC 2d 288, 290 (1985)(citation omitted); see also Fox Television Stations, Inc., 10 FCC Rcd 8452, 8515 (1995)("[W]e do not typically find that a large financial investment by itself conveys control."). Rather than elevate an investor's financial contribution to a decisive factor in our analysis, therefore, we must also focus upon the contractual arrangements between investors in an applicant to determine the locus of control and influence. BBC License Subsidiary (WLUK), 10 FCC Rcd at 7932 (in determining governance of licensee "we are guided largely by documents, as amended, which establish the relationship" between the sole voting stockholder and the nonvoting stockholder); KIST Corp., 102 FCC 2d at 291 (the partnership agreement "reposes real authority in [the asserted controlling party], establishing the bona fides of his [assigned percentage]). Such an endeavor necessarily depends upon the facts surrounding each case and the parties or persons involved.

25. Here, Silver Management asks, in essence, that we exempt from attribution the nonvoting interest of TCI, which will be contributing virtually all of the equity in Silver Management, the proposed controlling entity of Silver King, and that we deem Diller, who will contribute one hundred dollars, to be the sole cognizable stockholder of Silver Management. The record is clear that TCI is providing monies to Silver Management more than sufficient to endow it not only with a level of potential "influence" over programming and other Silver King matters constituting an attributable interest, but with potential control of both entities. Yet, the term sheet setting the powers and rights of Diller and TCI establishes TCI's intention to contractually cede to Diller nearly all of its potential influence and control over Silver King and its television stations. Except with respect to the "Fundamental Matters," which we find are permissible investor protections that neither substantially restrict Diller's discretion nor rise to the level of attributable influence, TCI will possess no participatory rights in Silver Management, Silver King or its twelve television stations. Indeed, TCI will have no ability to elect or designate officers, directors or employees of Silver Management or Silver King or to become involved in either the overarching policymaking activities of the licensee or the day-to-day operations of the stations. Further, we observe that because of the restrictions on the transferability of Silver Managment shares, which mandates Diller's consent to TCI's transfer of stock, TCI cannot simply dispose of its stock if it disagrees with Diller's management of the companies or the licensees. In short, we find that so long as he continues to hold top management roles at Silver King and maintains a specified level of separate ownership of Silver King stock, Diller will wield absolute control and influence over Silver King and TCI will hold none such as would trigger our attribution rules.

26. Validating the bona fides of this arrangement and, thereby reinforcing our conclusion that TCI will not own an attributable interest in Silver King despite its nearly complete

ownership of the proposed controlling entity, Silver Management, are two extra-contractual elements: Diller's separate ten million dollar investment in Silver King and his extensive management experience in the motion picture and broadcast industries, which spans more than two decades. First, Diller has already purchased 220,994 shares of Silver King stock for five million dollars cash and has purchased an additional 220,994 shares, for which he is obligated to pay Silver King five million dollars. While this stock represents a small equity stake in Silver King relative to that held by TCI, we believe that it demonstrates Diller's personal financial commitment to Silver King. Second, according to information contained in the record, Diller was chairman of the board and CEO of QVC Network, Inc. from January 1993 until February 1995. From 1984 to 1992, he served as the chairman and CEO of Fox, Inc., overseeing the launch of the Fox television network. Prior to joining Fox, Diller served for ten years as chairman and CEO of Paramount Pictures Corporation. And before that stint, Diller was vice-president at ABC, where he worked from 1966 to 1975. As we have found in the past, a minority investor's broadcasting experience serves to buttress a finding that such an investor could realistically be expected to assume all influence and control in an applicant. See, e.g., BBC License Subsidiary (WLUK), 10 FCC Rcd at 7932.

27. Moreover, this case differs markedly from the situation in KIST Corp., where the primary investor's attempt to deflect his ownership to a minority investor was deemed by the Commission to be "giving away the store" to a "near stranger." 102 FCC 2d at 292. Instead, Diller's association with Silver King has boosted the value of the publicly traded stock, see Wall Street Journal, Nov. 28, 1995, at B10, col. 1, thereby countering any inference that TCI has given Diller "the store." Further, Diller's vast experience in running media companies clearly makes him no "near stranger" to TCI. Yet, this case does not resemble that in BBC License Subsidiary (WLUK), 10 FCC Rcd at 7926, in which a substantial investor, whose former employee was slated to serve as CEO and president of the licensee companies, sought to avoid attribution. There is no suggestion that Diller's past links to TCI call into question his independence in controlling and exercising exclusive influence in Silver King.

28. Our finding regarding TCI's noncognizable status, however, is predicated upon the terms of the agreements submitted in this proceeding. Thus, we shall require that copies of all amendments to the term sheets or subsequently executed definitive agreements be furnished to the Mass Media Bureau and that any substantial and material modification to the agreement may not be implemented without the Commission's prior approval.

29. That TCI is unable to influence management of the Silver King stations terminates only our attribution analysis. At issue under the cross-interest policy is not whether TCI can take an active role in the Silver King stations, but whether it could adjust its cable television system practices to protect its investment in those television stations. See, e.g. Wisconsin Television, Ltd., 102 FCC 2d 1001, 1005 (1985). We are also concerned with "'the potential for conflict of interest, unfair competition, and detriment to the public interest' which may result from certain types of business relationships, not expressly covered by the terms of the multiple ownership rule." Id. at 1004 (quoting Eastern Broadcasting Corp., 30

FCC 2d 745, 755 (Rev. Bd. 1971)). TCI argues that its 21.37 percent indirect equity interest in the Silver King stations is not "meaningful," especially in view of the permitted one-third non-attributable equity interest in Cleveland Television, 91 FCC 2d 1129. While we have relied on the actual percentage of equity ownership in past cross-interest cases as representative of a party's nonattributable financial interest in a licensee, we believe it is more precise to look to the value of that investment. Here, although on a share-for-share basis TCI's interest in Silver King represents 21.37 percent of the equity, such calculation ignores the control premium attached to that equity. Upon a change in law, under the Diller-TCI agreement, not only will TCI be entitled to convert its nonvoting preferred stock in Silver Management to voting stock for Diller's initial contribution of one hundred dollars, but TCI will be entitled to purchase Diller's supervoting Class B Silver Management stock, thereby converting TCI into the ultimate controlling stockholder of Silver King. We believe, therefore, that the value attached to TCI's initial financial interest most likely exceeds 21.37 percent and may at least approach the one-third interest found in Cleveland Television.

30. As to the second element of the cross-interest analysis, whether the media outlets serve "substantially the same area," given the small percentage of television households served by TCI cable systems in each Silver King market, from as little as 2.86 percent to no more than 21.26 percent, see paragraph 10, supra, we agree that the TCI cable systems do not serve the same area as the Silver King stations. Accordingly, so long as TCI's financial interest in Silver King does not increase[9] and TCI's cable subscribership is not materially augmented through the acquisition of additional cable systems in any of the eleven affected markets, we shall not attempt to divine the exact value of TCI's interest in Silver King and we find that it does not raise cross-interest policy concerns. That is, we do not believe TCI's investment in Silver King, as now structured, creates the "potential" for TCI to operate its cable systems in an anticompetitive manner. Further, we rely on Silver Management's representation that the Silver King television stations and TCI cable systems will be "operated independently in all respects" following consummation of the proposed transaction. We take this to mean that there will be no cooperative efforts in programming, advertising sales or employment, a commitment we have relied upon in past cross-interest situations. See, e.g., Telemundo Group, Inc., 10 FCC Rcd 1104, 1107 (1994). Moreover, the eleven television markets involved -- New York, Los Angeles, Chicago, Philadelphia, Boston, Dallas-Fort Worth, Houston, Miami, Tampa-St. Petersburg-Sarasota, Cleveland, and Baltimore -- range from the largest market in the country to the twenty-third largest. We believe that each is and will remain sufficiently competitive to sustain TCI's financial investment in the Silver King stations, as well as its ownership of the specified cable television systems. See, e.g. Quincy D. Jones, FCC 95-497 at ¶36 (released December 12, 1995)(Commission looks to "competitive and diverse nature" of affected markets in cross-interest analysis). In light of the above factors, we believe that TCI's current level of financial interest in the Silver King

[9] Any increase in TCI's interest in Silver King must be approved in advance by the Commission.

stations and its operation and control of currently held cable systems in the same markets will not severely impair economic competition and diversity in the eleven television markets.

Request for waiver of duopoly rule

31. Silver King requests a renewed permanent waiver of the television duopoly rule so that it may continue to operate WHSE-TV, Channel 68, Newark, New Jersey, and WHSP-TV, Channel 65, Vineland, New Jersey, under the control of Silver Management. Section 73.3555(b) of the Commission's Rules, the television duopoly rule, generally prohibits the common ownership of television stations whose Grade B contours overlap. In seeking a duopoly reauthorization for its two stations, Silver King asserts that no new duopoly combination is created as a result of a transfer of control of the licensee to Silver Management and that the material facts pertinent to Commission approval of its initial waiver request in Silver King Broadcasting of Vineland, Inc., 2 FCC Rcd 324 (1986), recon. denied sub nom. Press Broadcasting Co., 3 FCC Rcd 6640 (1988), aff'd sub nom. Office of Communications of the United Church of Christ v. FCC, 911 F.2d 803 (D.C. Cir. 1990), "have remained virtually unchanged in the nearly ten years since it was granted."

32. We clarify at the outset that a "permanent" waiver of the Commission's television duopoly rule, as well as any other multiple ownership rule, does not convey with the license to a new licensee or to a newly controlled licensee of the formerly authorized combination. Stockholders of CBS Inc., FCC 95-469 at ¶72 (substantial transfer of control necessitates renewed one-to-a-market request because previously granted waivers "do not run with the transfer of stations"); see also Act III Communications Holdings, L.P., FCC 95-508 (released January 16, 1996)(proposed transferee of Buffalo/Rochester television combination requested continuing waiver of the duopoly rule). Thus, applicants seeking Commission consent to the assignment of licenses of a duopoly combination or to a substantial transfer of control of a licensee of such a combination must justify anew their requests for continuing combinations. See, e.g., Act III Communications, FCC 95-508 at ¶8.

33. The set of factors the Commission utilizes in determining whether waiver of the rule would better serve the public interest has evolved through Commission case law. Those factors include: the extent of the overlap, the number of broadcast television voices available in the overlap area, the distinctness of the respective television markets, and the concentration of economic power resulting from the combination. See, e.g., Stockholders of CBS Inc., FCC 95-469 at ¶54; Iowa State University Broadcasting Corporation, 9 FCC Rcd 481, 487-88 (1993), aff'd sub nom. Iowans for WOI-TV, Inc. v. FCC, 50 F.2d 1096 (D.C. Cir. 1995). After balancing these factors, the Commission considers any public interest benefits proposed by the applicant to determine whether, in light of the overlap, the benefits outweigh any detriment which may occur from grant of the waiver. See Iowa State University, 9 FCC Rcd at 487-88. As with any waiver, it will only be granted if the Commission concludes that the waiver is in the public interest. It is against this standard that we will evaluate Silver King's request.

34. Here, Silver King addresses each of the waiver elements and fully demonstrates that common ownership of WHSE-TV and WHSP-TV under Silver Management control would continue to serve the public interest. Station WHSE-TV, Newark, is adjacent to New York City and located in the New York DMA, the nation's largest television market, while station WHSP-TV, Vineland, is approximately 35 miles southeast of Philadelphia and located in the Philadelphia DMA, the nation's fourth largest. We have often acknowledged the separate and distinct nature of these two markets, see, e.g., Stockholders of CBS, FCC 95-469 at ¶59, Paramount Stations Group of Philadelphia Inc., 10 FCC Rcd 10963, 10966 (1995), and Taft Broadcasting Partners Limited Partnership, 7 FCC Rcd 2854, 2855 (1992), and we also have recently recognized that their geographical proximity "renders unavoidable a conflict with the Commission's duopoly rule for any applicant seeking to own and operate television stations" in both the large and competitive New York and Philadelphia markets. Paramount Stations Group, 10 FCC Rcd at 10965; see also Station Partners, FCC 95-304 at ¶12.

35. The Silver King combination is unique among all other duopoly waiver cases involving the New York and Philadelphia markets in that both stations are less powerful UHFs and that its Philadelphia market station, WHSP-TV, is licensed to a community 35 miles south of Philadelphia, in Vineland, New Jersey. We observe from Silver King's engineering exhibit that the Grade B contour of WHSP-TV, therefore, intersects that of WHSE-TV at only its extreme southern section, removed from the concentrated population centers of New York City and Newark. Accordingly, the percentages of viewers of the WHSE-TV and WHSP-TV Grade B service areas residing in the overlap area, 2.6 percent and 6.8 percent, respectively, are substantially less than those present in all of the Commission's past New York/Philadelphia duopoly waiver cases, excluding that pertaining to Silver King's earlier waiver.[10] See Stockholders of CBS Inc., FCC 95-469 at ¶58 (overlap area represents 14.8% of the population within the Grade B contour of the New York station and 28.5% of that within the Grade B contour of the Philadelphia station); Paramount Stations Group, 10 FCC Rcd at 10965 (1995) (overlap represents 8% of the population within the Grade B contour of the New York station and 19% of that within the Grade B contour of the Philadelphia station); Station Partners, FCC 95-304 at ¶2 (released July 24, 1995)(overlap represents 10.9% of the population within the Grade B contour of the New York station and 23.8% of the that within the Grade B contour of the Philadelphia station); Taft Broadcasting, 7 FCC Rcd at 2855 (1992)(overlap represents 4.3% of the population located within the Grade B contour of the New York station and 11.4% of that within the Grade B contour of the Philadelphia station); Channel 33, Inc., 4 FCC Rcd 7674 (1988)(overlap represents 6% of the population within the Grade B contour of the New York station and 15.8% of that within the Grade B contour of the Philadelphia station); and Capital Cities Communications, Inc., 59 RR 2d 451, 461 n.17 (1985)(overlap represents 12.4% of the population within the Grade

[10] In Silver King Broadcasting of Vineland, 2 FCC Rcd at 324, the population percentages were slightly lower, with the overlap area representing 2.2% of the population within the Grade B contour of WHSE-TV and 5.7% of the population within the Grade B contour of WHSP-TV.

B contour of the New York station and 24.7% of that within the Grade B contour of the Philadelphia station); see also Capital Cities/ABC, Inc., FCC 96-48 at ¶35 (released February 8, 1996)(overlap represents 14.6% of the population within the Grade B contour of the New York station and 27.5% of that within the Grade B contour of the Philadelphia station in request by The Walt Disney Company for renewing the waiver granted in Capital Cities Communications).

36. The percentages of the Grade B geographic area of each of WHSE-TV and WHSP-TV falling within the overlap, 8.9 percent and 9.3 percent, respectively, are also substantially smaller than those found in past New York/Philadelphia waiver cases. See, e.g., Stockholders of CBS, FCC 95-469 at ¶56 (overlap represents 35% of the area of the Grade B contour of the New York station and 25% of that of the Grade B contour of the Philadelphia station); Paramount Stations, 10 FCC Rcd at 10965 (overlap represents 24% of the area of the Grade B contour of the New York station and 23% of that of the Grade B contour of the Philadelphia station). While the extent of the overlap in this case is clearly not so slight as to be deemed de minimis, see H&C Communications, Inc., 9 FCC Rcd 144, 146 (1993)(overlap is de minimis where the overlap area represents less than one percent of both the area and the population of the Grade B service area of each station), it is, in the context of New York/Philadelphia waiver cases, so marginal as to result in slight detriment to the public interest.

37. In spite of the diminished overlap created by the WHSE-TV/WHSP-TV combination, Silver Management demonstrates that the common area is served by the Grade B or better signal of 24 other broadcast television stations. Ten of those signals, according to Silver King's engineering exhibit, serve the entire overlap area, three serve at least 90 percent of the area, and an additional four serve at least 60 percent of the area. Given the smaller overlap area in this case, we find that the level of broadcast television voices accessible here is commensurate with that in past Commission cases involving the New York/Philadelphia markets. Thus, continued authorization of the Silver King combination will not deprive viewers in the overlap area of a diversity of broadcast television signals. Nor will the combination, composed of two weaker UHF stations whose viewership, according to Silver King, is not even reported in Nielsen ratings for the New York and Philadelphia markets, effect an undue concentration of economic power. Further safeguarding against Silver King's attaining such power, in addition to the separateness of the markets, is Silver Management's pledge to operate the stations independently with respect to management, programming and advertising.

38. As for public interest benefits emanating from the combination, we note that the dual predicates in initially authorizing the combination ten years ago in Silver King Broadcasting of Vineland was first the financial plight of both WHSE-TV and WHSP-TV, each of which had struggled with various programming formats, including subscription television (STV) services, and second a commitment to offer a "significant amount of local programming." 2 FCC Rcd at 325. Silver King, which has affiliated the stations with the Home Shopping Network, now claims no financial difficulties. While the Commission has stated that the

poor economic status of a station may serve as a public interest benefit favoring grant of a duopoly for the New York and Philadelphia markets, see also Taft Broadcasting, 7 FCC Rcd at 2585, expanded service in the form of enhanced programming may also serve the same purpose. See Stockholders of CBS, FCC 95-469 at ¶60. Accordingly, we shall look to the programming commitments offered by Silver King in its renewed waiver request.

39. Silver King states that under the control of Silver Management, the home shopping formats of both stations will be converted within an approximately three-year period to a full-service mix of news and information, public affairs, children's and sports programming responsive to the needs, interests and concerns of viewers in the two communities of license. Specifically, Silver King states that it is the intention of Silver Management, "by the end of an approximately three-year transition period" following its acquisition of the stations, to "develop and begin broadcasting a total of at least ten hours per week of locally-produced news programming on each station."

40. In light of its satisfaction of the traditional waiver factors, the uniqueness of the New York and Philadelphia markets, and Silver King's programming representations, we find grant of the duopoly waiver for continued common ownership of WHSE-TV and WHSP-TV is in the public interest.

Request for continued satellite exemption

41. Silver Management seeks consent to acquire, through a transfer of control of Silver King, WHSI-TV, Channel 67, Smithtown, New York, which since 1980 has operated as a satellite station of WHSE-TV, Newark pursuant to Note 5 of Section 73.3555 of the Commission's Rules. See Suburban Broadcasting Corporation, 83 FCC 2d 359 (1980); Wometco Enterprises, Inc., 55 RR 2d 1545 (MMB 1984), rev. denied, 57 RR 2d 1033 (1985); File Nos. BALCT-860806KF - KG.[11] Note 5 exempts from application of the multiple ownership rules those television stations that are satellite operations. Authorized as a satellite station, therefore, WHSI-TV, whose Grade B contour overlaps with that of its parent WHSE-TV, does not violate the television duopoly rule and is not counted toward the national television ownership limitation. In the application before us, Silver Management asserts that because there has been no material change in the relevant facts and circumstances since the Commission last reviewed and approved WHSI-TV's satellite status, the continued common ownership of the two stations would serve the public interest and satisfy the Note 5 exemption.

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[11] Station WHSI-TV's former call sign was WSNL-TV and WHSE-TV's was WWHT(TV). Also, in 1980, when the Commission initially authorized WHSI-TV as a satellite station, the applicable exemption was Note 9 to Section 76.636 of the Commission's Rules. As noted in the text, infra, the satellite exemption standard was revised in 1991, subsequent to all of WHSI-TV's previous exemptions.

42. As we stated above with respect to waivers of our multiple ownership rules, the satellite exemption also must be renewed where the parent-satellite combination is assigned to a new licensee or where there is a substantial transfer of control of the existing licensee. Indeed, in Television Satellite Stations Review of Policy and Rules (Television Satellite Stations), 6 FCC Rcd 4212, 4215, on reconsideration Second Further Notice of Proposed Rule Making in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991), on further reconsideration Review of the Commission's Regulations Governing Television Broadcasting, 10 FCC Rcd 3524 (1995), the Commission expressly required that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with the three-part "presumptive" satellite exemption standard applicable to new satellite stations. Alternatively, applicants may demonstrate that there exist "other compelling circumstances" to warrant continued satellite authorization. The presumptive satellite exemption is met if three public interest criteria are satisfied. They are: (1) no city-grade overlap between the parent and the satellite; (2) service to an "underserved" area by the satellite station; and (3) no alternative operator ready and able to construct or to purchase and operate the satellite as a full-service station. See Television Satellite Stations, 6 FCC Rcd at 4212. Silver Management has submitted a showing which addresses its compliance with the satellite standard and asserts that WHSI-TV presumptively qualifies for exemption.

43. As to the first criterion, Silver Management's engineering exhibit indicates that there is no overlap of the city-grade contour of parent station WHSE-TV with that of WHSI-TV. Although Smithtown is located only 45 miles east of Newark, WHSE-TV has a directional pattern and a minimum radiation toward Long Island, resulting in tangential, but no intersecting, city-grade contours. Second, Silver Management states that Smithtown constitutes an "underserved" area under the transmission test, which defines as underserved a satellite community of license with two or fewer full-power stations. Id. at 4215. No television station other than WHSI-TV is licensed to Smithtown. Third, Silver Management maintains that the station's financial history, geographic location and technical facility establish that there exists no party ready and able to purchase and operate the proposed satellite as a full-service, stand-alone station. Silver Management notes, as recounted in Suburban Broadcasting Company, that from 1973 to 1980, Suburban Broadcasting Corporation (Suburban), the first licensee of WHSI-TV and the only one to operate it as a stand-alone station, lost $5.1 million in the first 20 months of operation, remained dark for four and one-half years, and experimented with STV service. 83 FCC 2d at 361. Since 1980, when STV programmer Wometco Enterprises, Inc. acquired WHSI-TV, the station has operated as a satellite of WHSE-TV, Newark. Subsequent to granting WHSI-TV's initial satellite status, the Commission has authorized transfer of the parent-satellite combination twice, to WBC Broadcasting in 1984 and to Silver King in 1986. See Wometco Enterprises, Inc., 55 RR 2d 1545 (MMB 1984), rev. denied, 57 RR 2d 1033 (1985); File Nos. BALCT-860806KF - KG.

44. In further support of its request for continued parent-satellite operation of WHSE-TV and WHSI-TV, Silver Management submitted an October 4, 1995 opinion letter from Brian E. Cobb, founding partner of Media Venture Partners, a national media brokerage firm.

Cobb asserts that in order for a stand-alone station to survive in the New York television market, the largest and most competitive in the nation, it must provide an adequate signal over New York City and most of the DMA. WHSI-TV, according to Cobb, is unable to do either. Silver Management states that WHSI-TV's signal is available either over-the-air or on cable to approximately only 620,000, or nine percent, of the 6.7 million television households in the New York DMA. Yet, asserts Cobb, despite its small coverage of the market, WHSI-TV would have to pay full price for programming, because it would be competing with the other New York market stations for such programming.[12] Even if WHSI-TV were to serve a greater portion of the market, asserts Cobb, it would have no prospect of obtaining an affiliation agreement with any "meaningful" compensation from any of the existing networks. And, adds Cobb, the "high level of other independent stations" that currently serve the market, would render impossible WHSI-TV's ability to survive as an independent.

45. Silver Management clearly satisfies the first two criteria. As for the third, that no party is ready and able to operate the satellite as a full-service station, we are persuaded that UHF television station WHSI-TV, broadcasting from Smithtown and reaching fewer than ten percent of the households within the New York DMA, renders infeasible the operation of WHSI-TV as a financially viable stand-alone station. Accordingly, we shall grant continued satellite status to WHSI-TV, Smithtown.

Conclusion

46. We find that Diller and Silver Management are fully qualified to be Commission licensees and that a grant of the applications would serve the public interest. This conclusion is based upon the structure and parties as proposed.

47. Accordingly, IT IS ORDERED that the petition to deny, filed by Jovon Broadcasting Corporation, IS DISMISSED and the allegations contained therein, identical to those raised in its petition for declaratory ruling, will be considered in conjunction with the petition for declaratory ruling.

48. IT IS FURTHER ORDERED that the applications for the transfer of control of the licensees ultimately controlled by Silver King Communications, Inc. from Roy Speer to Silver Management Company ARE GRANTED, subject to:

1. maintenance of the status quo between Jovon and Silver King, as detailed in paragraph 8, supra;

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[12] Indeed, Silver Management notes, this "anomaly" was recognized by the Commission in initially authorizing WHSI-TV as a satellite. See Suburban Broadcasting Co., 83 FCC 2d at 362.

2. prior approval by the Commission of any increase in TCI's interest in Silver King, as noted in note 9, supra; and

3. prior approval by the Commission of any material increase in the percentage of subscribers of TCI-owned cable systems within any of the eleven markets served by Silver King's television stations, as described in paragraph 30, supra; and

4. submission to the Mass Media Bureau of copies of all amendments to the term sheets or subsequently executed definitive agreements and prior approval by the Commission of any substantial and material modification to the agreements, as noted in paragraph 28, supra.

49. IT IS FURTHER ORDERED that the request for permanent waiver of the television duopoly rule, Section 73.3555(b) of the Commission's rules, to permit common ownership by Silver King Communications, Inc. of WEHS-TV, Newark, New Jersey, and WHSP-TV, Vineland, New Jersey, IS GRANTED.

50. IT IS FURTHER ORDERED that continued television satellite authorization, pursuant to Note 5 of Section 73.3555, for WHSI-TV, Smithtown, New York IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Applications of Roy M. Speer and Silver Management Company.

By this action, the Commission grants the applications seeking consent to the transfer of control of Silver King Communications, Inc. ("Silver King") from Roy M. Speer to Silver Management Company ("Silver Management"), a newly formed, privately held company, whose sole stockholders are Arrow Holdings L.L.C., wholly owned by Barry Diller ("Diller"), and Liberty Media Corporation, a wholly owned subsidiary of Tele-Communications, Inc. ("TCI").

I write separately to explain my reasons for supporting this transaction. The fact that Mr. Diller will wield de jure and de facto control of Silver Management is significant and very pertinent to the Commission's television-cable crossownership prohibition.[1] Mr. Diller's expertise in the broadcast industry substantiates this conclusion. The record sets forth numerous positions of corporate leadership that he has held in the recent past, including, but not limited to chairman of the board and CEO of QVC Network, Inc. from January 1993 until February 1995, chairman and CEO of Fox, Inc. ("Fox") from 1984 to 1992, as well as chairman and CEO of Paramount Pictures Corporation for ten (10) years prior to joining Fox. In addition, Mr. Diller served as Vice President at ABC from 1966 to 1975.

It is also significant that TCI will have no voting rights or the ability to establish representation on Silver Management's board of directors. The record provides evidence that TCI will infuse sufficient investment capital into Silver Management to have the potential to endow it with a level of influence over programming and certain other matters. However, the parties' financial submissions establish that TCI will lack the participatory rights in Silver Management, Silver King or any of the twelve (12) television stations being acquired in this transaction. TCI is also expressly precluded from electing or designating officers, directors or employees of Silver Management or Silver King or becoming involved in either the policy-making activities or day-to-day operations of the licensee or its stations. As a result of these explicit prohibitions placed on TCI, I am confident that adherence to the proposed structure and

[1] The Commission's television-cable cross-ownership rule generally prohibits ownership and/or control of a television station whose Grade B contour overlaps the service area of a cable television system. See 47 C.F.R. §76.501.

provisions of the agreement between the parties substantiates the Commission's conclusion that control of Silver Management will not rest with TCI, but with Mr. Diller.

Moreover, I think it is significant that following a "change in law",[2] Mr. Diller will continue to vote all of the Silver Management and Silver King stock held by TCI, and that a majority of directors will be designated by Mr. Diller.

Finally, I wish to clarify that my support for granting the television duopoly waiver in this instance is in no way contingent upon Silver Management's proposed commitment to modify its programming format. Rather, I support the grant of the permanent waiver here as a result of the unique contour circumstances that we have found exist with respect to stations in the New York, New Jersey and Philadelphia markets.[3] While we have considered general programming commitments in the past as only one criteria for the grant of permanent duopoly waivers in these markets, I will not support the consideration of a general program format as a basis for granting any waiver or approving any transaction before the Commission.

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[2] The parties' term sheet defines a change in law as such time as TCI can exercise full ownership and control over the Silver Management stock without violating the Communications Act or Commission rules.

[3] See Stockholders of CBS, Inc., FCC 96-48, released November 22, 1995; Capital Cities/ABC, Inc., FCC 96-48, released February 8, 1996.

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

RE: *Applications of Silver Management Company*

The availability of diverse sources of news and information is fundamental to our democracy. Maintaining competition among multiple sources of information ensures that one or a handful of individuals cannot unduly influence the course of public debate on issues of local or national importance.

In the present case, we are called upon to consider whether our commitment to diverse sources of news and information is undermined by permitting Tele-Communications Inc. (TCI), the largest cable multiple system operator in the United States, to own substantial equity in Silver King, whose television stations are located in communities that overlap those served by TCI cable systems. Our rules generally forbid the common ownership of broadcast properties and cable systems within the same locale, and the question here is whether TCI's investment in Silver King should be treated as an attributable interest for purposes of the cross-ownership rule.

Although the structure here raises troubling questions, particularly because of the extent to which the capital necessary for the transaction is being supplied by TCI, I have nonetheless concluded that this transaction should be approved. In this case, TCI can exercise no voting interest in Silver King (except for approval rights over extraordinary corporate actions) despite its roughly 21.4 percent of the overall equity. By contrast, Silver King's chief executive, Barry Diller, will control approximately two-thirds of the voting stock of Silver King. Mr. Diller also has contributed a sizeable personal investment in Silver King, with the express purpose of managing the Silver King properties himself. Mr. Diller's prior record in the industry demonstrates that he is fully capable of independently controlling and running Silver King, and I believe he is likely to do so.

TCI's investment results from exercising options obtained as a byproduct of another transaction (TCI's acquisition of Liberty), which suggests that TCI's role is more that of an investor than of a party seeking to influence operation of the television stations. Finally, our decision today ensures oversight of any increase in TCI's financial interest in Silver King and any material increase in the percentage of subscribers of TCI-owned cable systems within any of the eleven markets served by Silver King's television stations.

Weighing these facts, I conclude that the television stations will not be unduly influenced by Silver King's relationship with TCI. For this reason, I believe our decision today will not undermine our policies of diversity and competition.